No. 77-874

In the Supreme Court of the United States

OCTOBER TERM, 1977

GENANETT ALEXANDER, ET AL., PETITIONERS

v.

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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Washington, D.C. 20530.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A6-A16) is reported at 555 F. 2d 166. The opinion of the district court (Pet. App. A1-A5) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 20, 1977. A petition for rehearing was denied on September 19, 1977 (Pet. App. A17-A18). The petition for a writ of certiorari was filed on December 16, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether tenants who are ordered to vacate a deteriorating housing project that has been conveyed to the Department of Housing and Urban Development after a default by the sponsor are "displaced persons" entitled to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

STATEMENT

Petitioners are former tenants of a low-income housing development in Indianapolis. The development had been constructed and owned by a private nonprofit corporation whose mortgage was insured by the Department of Housing and Urban Development pursuant to Section 221(d)(3) of the National Housing Act, as added, 68 Stat. 601, and amended, 12 U.S.C. 1715*l*(d)(3). The owner went into default on the loan in 1970, and the mortgage was assigned to the Department, in accordance with the mortgage insurance agreement. After a period of continuing default by the owner, the Department initiated foreclosure proceedings and eventually acquired title to the development (Pet. App. A6-A7).

For a short time thereafter, the Department attempted to continue running the development and to secure needed repairs. But in the light of excessive operational costs and irreversible deterioration in the condition of the premises, the Department ultimately determined that the project would have to be closed. Accordingly, the Department had notices to quit served on all the tenants (Pet. App. A7).

Petitioners then brought this action in district court, claiming that they were entitled to relocation benefits under the Uniform Relocation Assistance and Real

Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. 4601 *et seq.* (Relocation Act).[1] The district court denied relief, holding that the Relocation Act did not apply to the Department's termination of the housing development (Pet. App. A1-A5). The court of appeals affirmed (Pet. App. A6-A16).

DISCUSSION

This case presents the question whether tenants are entitled to benefits under the Relocation Act when they are required to vacate a housing development that was acquired by the Department of Housing and Urban Development pursuant to a mortgage insurance agreement as the result of a default. This question has now been addressed by four courts of appeals. Three of those courts—the Second Circuit in *Caramico* v. *Secretary of Housing and Urban Development,* 509 F. 2d 694; the Eighth Circuit in *Harris* v. *Lynn,* 555 F. 2d 1357, affirming 411 F. Supp. 692 (E.D. Mo.), certiorari denied, October 31, 1977 (No. 77-5233); and the Seventh Circuit in this case—have held that the Act does not apply to the Department's terminations of acquired projects. On November 14, 1977, however, the Court of Appeals for the District of Columbia Circuit held, one judge dissenting, that tenants ordered to vacate a housing development in such circumstances were entitled to full benefits under the Relocation Act. *Cole* v. *Harris,* Nos. 75-2268 and 75-2269, decided November 14, 1977. The government has decided to file a petition for a writ of certiorari in *Cole* v. *Harris.*[2] Because the cases present

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[1]Certain of the petitioners also sought return of their security deposits, which were withheld for nonpayment of rent. That claim was denied in the district court and the court of appeals (Pet. App. A13-A16), and petitioners have not renewed it here.

[2]On February 3, 1978, Mr. Justice Brennan extended the time for the filing of a petition for a writ of certiorari in *Cole* v. *Harris* to April 13, 1978.

the same issue, we suggest that the Court hold the petition in the present case so that it may be considered together with the petition we will file in *Cole*. Since there is now a conflict among the circuits on this important issue, we do not oppose the granting of the petition in this case along with the petition we will file in *Cole*.

While reserving fuller discussion for our petition in *Cole*, we will briefly note here the nature of the issue presented by the two cases, the reasons why we believe the court of appeals decision in this case to be correct and the decision in *Cole* erroneous, and the reasons why the issue is significant enough, given the conflict among the circuits, to warrant review by this Court.

1. The Relocation Act provides a variety of benefits for individuals who fit the statutory standards for eligibility. Under specified circumstances the Act provides "moving and related expenses," 42 U.S.C. 4622; "replacement housing" payments of up to $15,000 for homeowners and $4000 for tenants, 42 U.S.C. 4623, 4624; and "relocation assistance advisory services," 42 U.S.C. 4625. The definition of "displaced person," on which eligibility for many of these benefits turns, is contained in Section 101(6) of the Act, 42 U.S.C. 4601(6), which provides in relevant part:

> The term "displaced person" means any person who * * * moves from real property * * * as a result of the acquisition of such real property, * * * or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency * * *.

The definition contains two clauses: the "acquisition clause," which reaches those who move as a result of an actual acquisition of property for a program or project

undertaken by a federal agency, and the "written order clause," which provides benefits for those who move as the result of a written order by the acquiring agency, even in the absence of an actual acquisition. The principal issue presented by this case and by *Cole* v. *Harris* is whether the written order clause applies only to tenants who are directed to vacate in connection with an acquisition or proposed acquisition of property, or whether that clause extends the benefits of the Relocation Act to all tenants who are ordered to vacate property previously acquired by a federal agency. A second, related issue involves the meaning of the phrase, "program or project undertaken by a Federal agency," with which the acquisition or the written order must be associated.

In this case, the Seventh Circuit adopted the narrower interpretation of the written order clause. The court held that the definition of displaced persons is limited to "persons displaced by governmental activities involving the acquisition of land to accomplish an objective benefiting the public or fulfilling a public need" (Pet. App. A12). The court further ruled, on the second issue, that the Department's action in ordering petitioners to vacate the project was not part of a "program or project undertaken by a federal agency to accomplish an objective benefiting the public as a whole" (Pet. App. A12). The Courts of Appeals for the Second and Eighth Circuits have reached the same result on generally similar facts. *Caramico* v. *Secretary of Housing and Urban Development, supra; Harris* v. *Lynn, supra.*

The Court of Appeals for the District of Columbia Circuit in *Cole* v. *Harris, supra,* adopted the broader interpretation of the written order clause. The court acknowledged that Congress had apparently focused only on persons displaced by acquisitions or proposed

acquisitions of property. Nonetheless, the court approved the award of benefits to tenants who were not displaced by an acquisition or proposed acquisition on the basis that, "if Congress had explicitly considered the problem of persons ordered to vacate government property for a program or project, it would have approved an interpretation of the Act making benefits available for such persons." *Cole* v. *Harris, supra,* slip op. 16.

2. Although the court in *Cole* v. *Harris* considered the "plain meaning" of the statute to support its view, we do not find the matter so clear. The written order clause speaks of a "written order of the acquiring agency." While the court in *Cole* v. *Harris* construed the words "acquiring agency" to mean an agency that has acquired the property in question at some time in the past, it is at least equally plausible that Congress used the words to mean an agency that is engaged in or proposing to engage in an acquisition.

The legislative history indicates that the written order clause was intended to provide a minor supplement to the coverage of the acquisition clause, not to expand the scope of the statute beyond the context of acquisitions of property. The initial version of the written order clause appeared in the Senate bill, where a "displaced person" was defined as a person forced to move from property "as a result of the acquisition *or reasonable expectation of acquisition*" of the property by a federal or state agency (emphasis added). S. 1, 91st Cong., 1st Sess. 105(1) - (5) (1969), 115 Cong. Rec. 31372 (1969). In the House Public Works Committee, the language of the definition was changed to its present form, which requires that the tenant be actually ordered to move in anticipation of an acquisition, instead of being eligible for benefits simply on the basis of his expectation than an acquisition would

occur. See S. 1, 91st Cong., 2d Sess. 1(6) (1970), 116 Cong. Rec. 40163 (1970). As the House Report noted: "[i]f a person moves as the result of such a notice to vacate, it makes no difference whether or not the real property actually is acquired." H.R. Rep. No. 1656, 91st Cong., 2d Sess. 4 (1970).

When the bill returned to the Senate, the only reference to the change in the definition of "displaced person" appeared in a memorandum on "points of significant concern" submitted by Senator Percy on behalf of the Administration. 116 Cong. Rec. 42139 (1970). The memorandum read, in relevant part:

> *Definition of displaced person.* The House bill would limit the status of displaced person to those who move as the result of the acquisition of, or written notice to vacate, real property. The Senate version would provide a broader definition which includes those who move as the result of acquisition or reasonable expectation of acquisition.

Consistent with the House Report, this memorandum reflected an understanding that the House bill narrowed the scope of the Senate language. The House prevailed, and the narrower language put forward by the House became the written order clause in Section 101(6) of the Act.

Thus it would appear, as Judge Wilkey concluded in his dissent in *Cole* v. *Harris,* that the House Committee's language *"limited* the definition, and certainly did *not vastly expand it by covering* all persons displaced with notice from property *already owned"* by a federal agency (slip op. 22 (Wilkey, J., dissenting), emphasis in original).

3. We agree with petitioners that the issue presented here and in *Harris* v. *Cole* is of substantial and continuing importance. As petitioners have noted, the Department of

Housing and Urban Development has been required, under mortgage insurance contract agreements, to take title to a large number of housing developments, and the Department anticipates that this necessity will continue. Resolution of the question whether the Relocation Act applies to orders to vacate issued by the Department following its involuntary acquisition of such properties is essential to enable the Department to weigh the human and material costs of demolishing a failing project rather than allowing it to continue deteriorating. Moreover, since the Relocation Act applies to all federal agencies and to state agencies receiving federal assistance, the issue presented has significance for all such agencies that own property on which tenants reside.

CONCLUSION

For the foregoing reasons, we suggest that the present petition for certiorari be held so that it may be considered together with the government's forthcoming petition for a writ of certiorari in *Cole* v. *Harris*; assuming that the petition in *Cole* v. *Harris* is granted, we do not oppose the granting of the petition in this case.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

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